HON'BLE THE ACTING CHIEF JUSTICE MR.BILAL NAZKI

AND

HON'BLE SRI JUSTICE R. SUBHASH REDDY

Writ Appeal No.1770 of 2005

Dated: 26th September 2005

Between:

Chennaboina Sambaiah … Appellant

And

The District Collector, Warangal District.

And three others. … Respondents.

Oral Judgment: (per Hon'ble the Acting Chief Justice)

…

1. This is an appeal against the order passed by the learned single Judge in Writ Petition No.8911 of 2005. The writ petitioner lost the writ and has filed the appeal. He is Upa-Sarpanch of Muthojipeta Gram Panchayat. He wants to succeed the elected Sarpanch, being respondent No.4, after seeing that respondent No.4 was disqualified to be a Sarpanch. His case was that on the crucial date, respondent No.4 was father of three children, and, as such, was disqualified in terms of Section 19 of the Andhra Pradesh Panchayat Raj Act, 1994 (for short 'the Act'). It appears that when he made a complaint, the District Collector passed an order, according to him under Section 19 (3) of the Act, disqualifying respondent No.4 from being the Sarpanch on the ground that his wife has given birth

to third child after the specified date. Respondent No.4 challenged this order of the District Collector by way of a writ petition, being Writ Petition No.19854 of 2003. This writ petition was disposed of with a finding that he was entitled to continue as Sarpanch under
Section 22 of the Act till O.P.No.610 of 2003, which was pending before the District Judge, was disposed of. The O.P. stands now dismissed as not pressed. Therefore, the petitioner filed the writ petition contending that since the O.P. had been dismissed and the order of stay granted by the Court in W.P.No.19854 of 2003 has lived its life, as it had to remain operative till the disposal of the O.P., the order of the Collector gets revived disqualifying respondent No.4, and, therefore, respondents should be directed to remove respondent No.4 from the post of Sarpanch.

2. We have heard the learned counsel for the appellant and perused the Act. Section 19 merely lays down the disqualifications of members. It does not at all give any power to any authority, including the Collector to declare a person to be disqualified from holding a post. The only authority created under the Act who can declare a person to have become disqualified is the District Judge. Section 22 of the Act is reproduced below:

22. Authority to decide questions of disqualification of members:

1. Where an allegation is made that any person who is elected as a member of a gram panchayat is not qualified or has become disqualified under Section 17, Section 18, Section 19 or
Section 20 by any voter or authority to the executive authority in writing and the executive authority has given intimation of such allegation to the member through the District Panchayat Officer and such member disputes the correctness of the allegation so made, or where any member himself entertains any doubt whether, or not he has become disqualified under any of those sections, such member or any other member may, and the executive authority, at the direction of the gram panchayat or the Commissioner shall, within a period of two months from the date on which such intimation is given or doubt is entertained, as the case may be, apply to the District Court having jurisdiction over the area in which office of the gram panchayat is situated for decision.

2. Pending such decision, the member shall be entitled to act as if he is qualified or were not disqualified.

3. Where a person ceases to be the Sarpanch or Upa-Sarpanch of a gram panchayat as a consequence of his ceasing to be a member of the gram panchayat under clause (b) of Section 20 and is restored later to his membership of the gram panchayat under sub-section (2) of Section 21, he shall, with effect from the date of such restoration, be deemed to have been restored also to the office of Sarpanch or Upa-Sarpanch, as the case may be.

3. The District Judge will act on a complaint made before him. At any point of time nobody, neither the Collector nor the petitioner, has made any complaint against respondent No.4 before the District Judge. The order of the Collector is *ex facie* without jurisdiction and this Court is not expected to give directions for execution and implementation of an order passed by the Collector, which is without jurisdiction. For these reasons, we do not find any ground whatsoever to interfere in the order passed by the learned single Judge. The appeal is misconceived and is dismissed.

4. However, if the appellant is still aggrieved on continuance of respondent No.4 as Sarpanch and he believes that respondent No.4 has incurred a disqualification, he is at liberty to approach the appropriate Court.

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(Bilal Nazki, ACJ)

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(R. Subhash Reddy, J)

26th September 2005

svs